

**Permitting & Assistance Branch Staff Report**  
Revised Solid Waste Facilities Permit for  
Otay Landfill  
SWIS No. 37-AA-0010  
June 19, 2017

**Background Information, Analysis, and Findings:**

This report was developed in response to the County of San Diego Department of Environmental Health Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed Revised Solid Waste Facilities Permit (SWFP) for Otay Landfill SWIS No. 37-AA-0010, located near the City of Chula Vista in San Diego County. The facility is operated and owned by Otay Landfill Incorporated (a subsidiary of Republic Services, Inc.). A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was initially received on April 14, 2017. An updated permit was received on April 28, 2017, June 9, 2017, and June 13, 2017. Action must be taken on this permit no later than August 12, 2017. If no action is taken by August 12, 2017, the Department will be deemed to have concurred with the issuance of the proposed modified SWFP.

**Proposed Changes:**

The following changes to the first page of the permit are being proposed:

	Current SWFP (2012)	Proposed SWFP
Maximum Permitted Tonnages	5,830 Tons Per Day (not to exceed a maximum weekly tonnage limit of 35,000 tons per week)	6,700 Tons Per Day (not to exceed the existing maximum weekly tonnage limit of 35,000 tons per week)
Total Permitted Site	410 acres	408.97 acres
Estimated Closure Date	February 2028	February 2030

Other changes include edits to the following sections of the SWFP: "Prohibitions," documents that describe and/or restrict the operation of the facility, "Self-Monitoring," and "LEA Conditions" for the purpose of updating and/or clarifying, updates to the Joint Technical Document and Preliminary Closure/Postclosure Maintenance Plan.

**Key Issues:**

The proposed permit will allow for the following:

1. Increase in the permitted daily tonnage from 5,830 tons per day to 6,700 tons per day (not to exceed the existing maximum weekly tonnage limit of 35,000 tons per week);
2. Update in the landfill permitted boundary from 410 acres to 408.97 acres;
3. Update to the estimated closure date from 2028 to 2030; and

4. Updates to the Joint Technical Document and Preliminary Closure/Postclosure Maintenance Plan.

**Background:**

The Otay Landfill, located in the southwest portion of San Diego County, has been developed over a period of thirty-five (35) years. The property that now comprises the Facility was owned and operated by several jurisdictions, including the Cities of Chula Vista and San Diego, and the County of San Diego (County).

The site was originally operated as a bentonite quarry until 1949, after which, it was selected for waste disposal operations due to the high quality and low hydraulic conductivity of the bentonite beneath the site. The site, situated on approximately 265 acres, opened in the City of Chula Vista (City) in 1963 and operated both Class I and Class III disposal areas until 1980. The Class I waste disposal area occupied a 47-acre portion of the site. The Class III area, located south of the Class I waste disposal area, was permitted under SWFP No. 37-AA-0009. This area accepted municipal solid waste (MSW) and construction and demolition (C&D) waste in unlined areas between the years of 1963 to 1967 and operated as an open burn dump.

The County expanded the site in 1976 by acquiring an additional 251 acres to the east of the original site, for a total site footprint of 516 acres. This new area opened in 1979 and was known as the Otay Annex Landfill (Annex). The Annex was permitted as a Class II disposal area and operated under SWFP No. 37-AA-0010. A six-acre portion of the northwest corner of the site was obtained by the Otay Water District. The site accepted residential, commercial, agricultural, and construction wastes in the unlined areas of Canyons 1 and 2. Disposal operations are currently occurring in the lined, Subtitle D Canyon 3 area.

Since the Annex and Otay Landfill were adjacent to each other, they basically operated as one site. The landfills shared a common operator, facility entrance, scales, and fee booth. However, since the Otay Landfill was within the City boundaries and the Annex within the County boundaries, the sites operated under two (2) different SWFPs and landfill use permits.

In accordance with an agreement between the City and the County, dated May 15, 1996, the City de-annexed the original Otay Landfill property (265 acres) from their jurisdiction to the County. Subsequently, the County Board of Supervisors divested the County landfills, including the Otay Landfill, in November 1996. The Facility currently operates under one SWFP.

Ownership of the now Otay Landfill (original site + Annex) was transferred to Otay Landfill, Inc. (OLI), a Republic Services, Inc. (Republic) company on June 23, 2008, with the exception of the Class I disposal area (47 acres) which is retained by the County. In addition to the six-acre portion of the site obtained by the Otay Water District, Republic donated 54 acres in the northwest corner of the site to the City in 2009, bringing the current size of the site to 408.97 acres.

**Findings:**

Staff recommends concurrence in the issuance of the proposed revised SWFP. All of the submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated April 14, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on May 15, 2015. The LEA provided a copy to the Department on May 21, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received a proposed Solid Waste Facilities Permit on June 13, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on April 14, 2017, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the Countywide Siting Element, as described in their memorandum dated May 11, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(5) Preliminary or Final Closure/ Plan Consistency with State Minimum Standards	Engineering Support Branch staff in the Closure and Technical Support Section found the Preliminary Closure/Postclosure Maintenance Plan technically adequate as described in their memorandum dated April 25, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(6) Known or Reasonably Foreseeable Corrective Action Cost Estimate	Engineering Support Branch staff in the Closure and Technical Support Section have found the written estimate to cover the cost of known or reasonably foreseeable corrective action technically adequate as described in their memorandum dated April 25, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

27 CCR Sections	Findings	
21685(b)(7)(A) Financial Assurances	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Financial Assurances documentation for closure, postclosure maintenance, and corrective action in compliance as described in their memorandum dated April 21, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(B) Operating Liability Compliance	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Operating Liability in compliance as described in their memorandum dated April 21, 2017.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on April 25, 2017. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on April 14, 2017, that the proposed permit is consistent with and supported by the existing CEQA documentation. See Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on March 16, 2017. No written comments were received by LEA or Department staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed revised SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

### **Compliance History:**

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on April 25, 2017 and found that the facility was in compliance with applicable state minimum standards.

Below are the details of the facility's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2017 (March) – One violation of PRC 44014(b) - Operator Complies with Terms & Conditions.

- 2016 (January, March, April) – Three violations of 27 CCR Section 20921 - Gas Monitoring and Control.
- 2016 (January) – One violation of 27CCR Section 20690 – Alternative Daily Cover.
- 2015 (February, June, July, August, September) – Five violations of PRC 44014(b) – Operator Complies with Terms and Conditions.
- 2015 (January - June) – Six violations of 27 CCR Section 20921 – Gas Monitoring and Control.
- 2015 (April) – One violation of 27 CCR Section 20690 – Alternative Daily Cover.
- 2014 (May - December) – Eight violations of 27 CCR Section 20921 – Gas Monitoring and Control.
- 2013 – No Violations.
- 2012 (September – December) No violations. CalRecycle concurred on a Modified SWFP on August 21, 2012.

All the violations were corrected to the satisfaction of the LEA.

### **Environmental Analysis:**

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the County of San Diego, Department of Planning and Land Use acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed permit are an increase in the permitted daily tonnage from 5,830 tons per day to 6,700 tons per day (not to exceed the existing maximum weekly tonnage limit of 35,000 tons per week), update in the landfill permitted boundary from 410 acres to 408.97 acres, update to the estimated closure date from 2028 to 2030, and updates to the Joint Technical Document and Preliminary Closure/Postclosure Maintenance Plan. These changes are supported by the following environmental documents.

A Final Environmental Impact Report (FEIR), State Clearinghouse No. 1996091009, dated February 2000, was prepared by the County of San Diego Department of Planning and Land Use for Otay Landfill, Inc. and was circulated for a 45-day comment period from February 23, 1999 to April 9, 1999. The FEIR, dated February 2000, was certified by the San Diego County Planning Commission on February 18, 2000.

Under CEQA Guidelines Section 15162, when an FEIR has been certified or a negative declaration (ND) adopted for a project, no subsequent environmental document shall be prepared for that project unless the Lead Agency determines, on the basis of substantial evidence in light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project, which will require major revisions of the previous FEIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous FEIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous FEIR was certified as complete or the ND was adopted, shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous FEIR or ND;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous FEIR;
  - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous FEIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

PRC Section 21068 defines “Significant effect on the environment” as a substantial, or potentially substantial, adverse change in the environment. CEQA Guidelines Section 15382 further defines, a “Significant effect on the environment” as meaning a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A lead or responsible agency may prepare an addendum to a previously adopted FEIR if some changes or additions are necessary or none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent FEIR have occurred, pursuant to Section 15164(a) of the CEQA Guidelines.

Thus, Section 15164(a) of the CEQA Guidelines provides that an addendum to a FEIR is the appropriate documentation when the lead agency or a responsible agency has determined that none of the conditions described in CEQA Guidelines Section 15162 exist – specifically there are no new significant environmental effects as a result of the changed project.

An Addendum with an Environmental Review Update Checklist Form to the 2000 Final EIR, State Clearinghouse No. 1996091009, were completed on June 8, 2017 by the County of San Diego Department of Environmental Health, Solid Waste Local Enforcement Agency. The 2017 Addendum to the FEIR addressed the daily increase in permitted tonnage while maintaining the previously approved maximum of 35,000 tons of waste per week for disposal, administrative correction to the total permitted site acreage and additional two years of service at the site as described above.

The County of San Diego Solid Waste Local Enforcement Agency has provided a finding that the proposed revised SWFP is consistent with and supported by the cited environmental documents.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the FEIR and Addendum as prepared by the Lead Agency and LEA, respectively, in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed revised SWFP. Department staff has reviewed and considered the CEQA record and recommends the FEIR and 2017 Addendum are adequate for the Branch Chief's approval of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed revised SWFP and all of its components and supporting documentation, this staff report, the FEIR certified by the Lead Agency and Addendum prepared by the LEA, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed revised SWFP. The custodian of the Department's administrative record is Ryan Egli, Legal Office, Department of Resources Recycling and Recovery, P. O. Box 4025, Sacramento, CA 95812-4025.

**Public Comments:**

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on March 16, 2017, at the Otay Landfill in Chula Vista. No comments were received during the informational meeting. One comment was received by the LEA through the County of San Diego's Listserve. The resident who provided the comment lives approximately five miles from the proposed project site and had a question regarding landfill odor. The LEA contacted the resident and exchanged contact information and suggested that the resident contact them via telephone next time there are any issues regarding the Otay Landfill. In the event odors are suspected to be from the Otay Landfill, the LEA will refer concerns to the San Diego County Air Pollution Control District to investigate the source of the odor.

Department staff provided an opportunity for public comment during the CalRecycle Monthly Public Meetings on May 16, 2017. No comments have been received by Department staff.